TERMS AND CONDITIONS OF THE METAALUNIE 1 January 2019

General Terms and Conditions issued by Koninklijke Metaalunie (the employers' organisation for small and medium-sized enterprises in the metal industry) referred to as TERMS AND CONDITIONS OF THE METAALUNIE, filed with the Registry of the Court of Rotterdam on 1 January 2019. Publication of the Koninklijke Metaalunie, P.O. Box 2600, 3430 GA, Nieuwegein.

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Article 1: Scope of application

1.1. These Terms and Conditions apply to all offers made by a Metaalunie member, to all agreements that it enters into and to all agreements arising from this, all of which insofar as the Metaalunie member is the supplier or the contractor.

1.2. Metaalunie members who apply these Terms and Conditions are referred to as the Contractor. The other party is referred to as the Client.

1.3. In the event of conflicts between the agreement entered into by the Client and the Contractor and these Terms and Conditions, the provisions of the agreement will prevail.

1.4. These Terms and Conditions may only be applied by Metaalunie members.

Article 2: Offers

2.1. All offers are without obligation. The Contractor is entitled to revoke its offer up to two working days after it has received the acceptance.

2.2. If the Client provides the Contractor with information, the Contractor may assume that it is accurate and complete and will base its offer on this information.

2.3. The prices stated in the offer are denominated in euros, excluding VAT and other government levies or taxes. The prices do not include travel, accommodation, packaging, storage and transport costs, nor do they include costs for loading, unloading and cooperating with customs formalities.

Article 3: Confidentiality

3.1. All information provided to the Client by or on behalf of the Contractor, such as offers, designs, images, drawings and know-how, of whatever nature and in whatever form are confidential, and the Client will not use it for any purpose other than for the implementation of the agreement.

3.2. The Client will not disclose or reproduce the information referred to in paragraph 1 of this article.

3.3. If the Client infringes one of the obligations referred to in paragraphs 1 and 2 of this article, it will owe an immediately payable penalty of € 25,000 for each infringement. This penalty can be claimed in addition to compensation by virtue of the law.

3.4. The Client must return or destroy the information referred to in paragraph 1 of this article immediately on request, within a period set at the discretion of the Contractor. If this provision is infringed, the Client will owe the Contractor an immediately payable penalty of € 1,000 per day. This penalty can be claimed in addition to compensation by virtue of the law.

Article 4: Advice and information provided

4.1. The Client cannot derive any rights from advice and information provided by the Contractor that is not directly related to the contract.

4.2. If the Client provides the Contractor with information, the Contractor may assume that it is accurate and complete when implementing the agreement.

4.3. The Client indemnifies the Contractor against any third-party claims related to the use of advice, drawings, calculations, designs, materials, brands, samples, models and the like provided by or on behalf of the Client. The Client will compensate the Contractor for all damage suffered by the Contractor, including all costs incurred for defence against these claims.

Article 5: Delivery time/implementation period

5.1. Delivery times or implementation periods specified are indicative.

5.2. The delivery time or implementation period only commences once an agreement has been reached on all commercial and technical details, once all the information, including final and approved drawings and the like, is in the possession of the Contractor, the agreed payment (or instalment) has been received, and the other conditions for the contract have been met.

5.3. If:

a. there are circumstances other than those known to the Contractor at the time it set the delivery period or implementation period, the delivery period or implementation period may be extended by the time the Contractor needs – taking into account its planning – to implement the contract under these circumstances;
b. there are contract extras, the delivery period or implementation period may be extended by the time the Contractor needs – taking into account its planning – to have the materials and parts delivered and to carry out the contract extras;
c. the Contractor suspends its obligations, the delivery period or implementation period may be extended by the time the Contractor needs – taking into account its planning – to implement the contract after the reason for the suspension no longer applies.

Unless the Client has evidence to the contrary, the duration of the extension of the delivery period or implementation period is presumed to be necessary and to be the result of a situation as referred to above in a to c.

5.4. The Client is obliged to pay all costs that the Contractor incurs or damages that the Contractor suffers as a result of a delay in the delivery or implementation period as stated in paragraph 3 of this article.

5.5. Under no circumstances does exceeding the agreed delivery or implementation period give the Client the right to compensation or to terminate the agreement. The Client indemnifies the Contractor against any third-party claims due to exceeding the delivery or implementation period.

Article 6: Delivery and risk transfer

6.1. Delivery takes place when the Contractor, at its business location, makes the good available to the Client and has informed the Client that the good is at its disposal. From that time onwards, the Client bears the risk of the good in terms of storage, loading, transport and unloading among others.

6.2. The Client and the Contractor may agree that the Contractor will be responsible for the transport. In that case too, the Client bears the risk of, inter alia, storage, loading, transport and unloading. The Client can insure itself against these risks.

6.3. If a good is exchanged and the Client retains the good to be exchanged pending delivery of the new good, the risk of the good to be exchanged remains with the Client until the time that it hands over the good to the Contractor. If the Client is unable to deliver the good to be exchanged in the condition in which it was when the agreement was concluded, the Contractor may terminate the agreement.

Article 7: Price changes

The Contractor may pass on to the Client an increase in cost-determining factors that occurs after entering into the agreement. The Client is obliged to pay the price increase immediately on the Contractor's request.

Article 8: Force majeure

8.1. If the Contractor fails to fulfil its obligations, this cannot be attributed to the Contractor if this failure is due to force majeure.

8.2. Force majeure includes, inter alia, if third parties engaged by the Contractor – such as suppliers, subcontractors and transporters, or other parties that the Client is dependent on – do not meet their obligations at all or on time, or circumstances due to weather conditions, natural disasters, terrorism, cybercrime, disruption of digital infrastructure, fire, power failures, loss, theft or loss of tools, materials or information, roadblocks, strikes or work interruptions and import or trade restrictions.

8.3. The Contractor is entitled to suspend fulfilment of its obligations if it is temporarily prevented from fulfilling its obligations to the Client due to force majeure. Once the force majeure circumstances no longer apply, the Contractor will fulfil its obligations as soon as its planning permits.

8.4. If it concerns force majeure and fulfilment is or becomes permanently impossible, or the temporary force majeure circumstances have lasted for more than six months, the Contractor is entitled to terminate the agreement with immediate effect either entirely or in part. In those cases, the Client is entitled to terminate the agreement with immediate effect, but only for that part of the obligations that the Contractor has not yet fulfilled.

8.5. The parties are not entitled to compensation for the damages suffered or to be suffered as a result of the force majeure, suspension or termination as referred to in this article.

Article 9: Scope of the work

9.1. The Client must ensure that all licences, exemptions and other decisions that are necessary to carry out the work are obtained in good time. The Client is obliged to send the Contractor a copy of the aforementioned documents immediately on the Contractor's request.

9.2. Unless otherwise agreed in writing, the work does not include:

a. groundwork, pile driving, cutting, breaking, foundation work, masonry, carpentry, plastering, painting, wallpapering, repair work or other construction work;
b. making connections to gas, water, electricity, internet or other infrastructural facilities;
c. measures to prevent or limit damage to, of theft or loss of goods present at or near the workplace;
d. removing equipment, building materials or waste;
e. vertical and horizontal transport.

Article 10: Contract extras

10.1. Changes in the work will in any event lead to contract extras if:

a. it concerns changes in the design, the specifications or the contract documents;
b. the information provided by the Client does not correspond with reality;
c. the estimated quantities deviate by more than 5%.

10.2. Contract extras are calculated on the basis of the price-determining factors that apply at the time the extra work is performed. The Client is obliged to pay the price for the contract extras immediately on the Contractor's request.

Article 11: Implementation of the work

11.1. The Client will ensure that the Contractor can carry out its work undisturbed and at the agreed time and that it is given the necessary facilities for the implementation of its work, such as:

a. gas, water, electricity and internet;
b. heating;
c. lockable dry storage space;
d. the facilities prescribed under the Dutch Working Conditions Act [Arbowet].

11.2. The Client bears the risk and is liable for damage to and theft or loss of goods belonging to the Contractor, Client and third parties, such as tools, material or equipment intended for the work or used for the work, located at or near the place where the work is carried out or at another agreed location.

11.3. Notwithstanding the provisions in paragraph 2 of this article, the Client is obliged to take out adequate insurance against the risks referred to in that paragraph. In addition, the Client must take out insurance for the risk of work-related damage with regard to the equipment to be used. The Client must send the Contractor a copy of the relevant insurance(s) and proof of payment of the premium immediately on request. In the event of damages, the Client is obliged to report this immediately to its insurer for further processing and settlement.

Article 12: Delivery of the work

12.1. The work is considered to be delivered in the following cases:

a. once the Client has approved the work;
b. if the Client has put the work into operation. If the Client puts part of the work into operation, then that part is considered to have been delivered;
c. if the Contractor has notified the Client in writing that the work has been completed, and the Client fails to inform the Contractor in writing that the work has not been approved within 14 days of the day of the notification;
d. if the Client does not approve the work on the grounds of minor defects or missing parts that can be repaired or delivered within 30 days and that do not hinder the commissioning of the work.

12.2. If the Client does not approve the work, it is obliged to inform the Contractor of this in writing, stating the reasons. The Client must give the Contractor the opportunity to deliver the work at a later date.

12.3. The Client indemnifies the Contractor against third-party claims concerning damage to parts of the work not delivered due to the use of parts of the work that have already been delivered.

Article 13: Liability

13.1. In the event of an attributable failure, the Contractor is still obliged to fulfil its contractual obligations, with due observance of Article 14.

13.2. The Contractor's obligation to compensate damages – regardless of the grounds – is limited to the damage against which the Contractor is covered under an insurance policy taken out by it or on its behalf. However, the scope of this obligation is never greater than the amount paid out under this insurance in the case in question.

13.3. If, for whatever reason, the Contractor does not have the right to invoke paragraph 2 of this article, the obligation to compensate damage is limited to a maximum of 15% of the total contract amount (excluding VAT). If the agreement consists of parts or partial deliveries, this obligation is limited to a maximum of 15% (excluding VAT) of the contract amount for that part or that partial delivery. If it concerns continuing performance contracts, the obligation to compensate damage is limited to a maximum of 15% (excluding VAT) of the contract amount owed over the last twelve months prior to the loss-causing event.

13.4. The following do not qualify for compensation:

a. consequential damages. Consequential damages include inter alia business interruption losses, loss of production, loss of profit, penalties, transport costs and travel and subsistence expenses;
b. damage to property in the care, custody or control of, but not owned by the insured party. Among other things, this damage includes damage caused by or during the performance of the work to goods that are being worked on or to goods that are located in the vicinity of the place where the work is being carried out;
c. damage as a result of intent or wilful recklessness by the Contractor's auxiliary staff or non-managerial subordinates.

The Client can take out insurance for these damages if possible.

13.5. The Contractor is not obliged to compensate damage to material supplied by or on behalf of the Client as a result of improper processing.

13.6. The Client indemnifies the Contractor against all third-party claims due to product liability as a result of a defect in a product that has been delivered by the Client to a third party and of which the products or materials supplied by the Contractor are a part. The Client is obliged to reimburse all the damages suffered by the Contractor in this respect, including the (full) costs of the defence.

Article 14: Guarantee and other claims

14.1. Unless otherwise agreed in writing, the Contractor guarantees the proper execution of the agreed performance for a period of six months after delivery or completion, as detailed in the following paragraphs.

14.2. If the parties have agreed to deviating guarantee conditions, the provisions of this article will remain in full force, unless this is in conflict with those deviating guarantee conditions.

14.3. If the agreed performance has not been executed properly, the Contractor will decide within a reasonable period of time whether it will still perform the work properly or credit the Client for a proportionate part of the contract amount.

14.4. If the Contractor opts to still execute the performance properly, it will determine the manner and time of execution. The Client must in all cases offer the Contractor the opportunity to do so. If the agreed performance (also) included the processing of material provided by the Client, the Client must supply new material at its own expense and risk.

14.5. The Client is responsible for sending parts or materials that are to be repaired or replaced by the Contractor to the Contractor's business location.

14.6. The following are for the Client's account:

a. all transport or shipping costs;
b. costs for dismantling and assembly;
c. travel and subsistence expenses and travel time.

14.7. The Contractor is only obliged to implement the guarantee if the Client has fulfilled all its obligations.

14.8. a. The guarantee does not cover defects that are the result of:

- normal wear and tear;
- improper use;
- lack of maintenance or maintenance carried out incorrectly;
- installation, assembly, modification or repairs carried out by the Client or third parties;
- faulty or unsuitable goods originating from or prescribed by the Client;
- faulty or unsuitable materials or tools used by the Client.

b. No guarantee is given for:

- goods delivered that were not new at the time of delivery;
- inspections and repairs carried out on goods owned by the Client;
- parts that are subject to a manufacturer's guarantee.

14.9. The provisions of paragraphs 3 to 8 of this article apply by analogy to any of the Client's claims based on breach of contract, non-conformity or any other basis whatsoever.

Article 15: Obligation to complain

15.1. The Client no longer has the right to invoke a defective performance if it has not complained to the Contractor in writing within fourteen days after it discovered or should reasonably have discovered the defect.

15.2. The Client must have filed complaints about the invoice with the Contractor in writing and within the payment term, subject to forfeiture of all rights. If the payment term is longer than thirty days, the Client must have filed its complaint in writing within thirty days of the invoice date at the latest.

Article 16: Failure to take possession of goods

16.1. The Client is obliged to take actual possession of the goods that are the subject of the agreement at the agreed location at the end of the delivery or implementation period.

16.2. The Client must cooperate fully and free of charge to enable the Contractor to deliver the goods.

16.3. Goods not taken into possession are stored at the Client's expense and risk.

16.4. If the provisions of paragraph 1 or 2 of this article are infringed, the Client will owe the Contractor a penalty for each infringement of € 250 per day up to a maximum of € 25,000, after the Contractor has given notice of default. This penalty can be claimed in addition to compensation by virtue of the law.

Article 17: Payment

17.1. Payment is made at the Contractor's business address or into an account to be designated by the Contractor.

17.2. Unless otherwise agreed, payments must be made within 30 days of the invoice date.

17.3. If the Client fails to fulfil its payment obligation, it is obliged to comply with a request from the Contractor for a tender of payment instead of the agreed amount.

17.4. The Client's right to offset its claims against the Contractor or to suspend the fulfilment of its obligations is excluded, unless the Contractor has been granted a suspension of payments or is bankrupt or the statutory debt adjustment scheme applies to the Contractor.

17.5. Irrespective of whether the Contractor has fully executed the agreed performance, everything that the Client owes or will owe it under the agreement is immediately due and payable if:

a. a payment term has been exceeded;
b. the Client does not fulfil its obligations under Article 16;
c. the Client has filed for bankruptcy or suspension of payments;
d. the Client's goods or claims have been attached;
e. the Client (a company) is dissolved or wound up;
f. the Client (a natural person) files a application to be admitted to the statutory debt adjustment scheme, is placed under a guardianship order or has died.

17.6. If payment is delayed, the Client will owe interest on that sum to the Contractor with effect from the day following the day agreed as the final day of payment up to and including the day on which the Client settles the amount in question. If the parties have not agreed on the final day of payment, the interest is due from 30 days after the sum has become due and payable. The interest is 12% per year, but is equal to the statutory interest if this is higher. For the interest calculation, a part of the month is considered to be a full month. At the end of each year, the amount on which the interest is calculated will be increased by the interest due for that year.

17.7. The Contractor is entitled to offset its debts to the Client against claims that companies affiliated to the Contractor have against the Client. In addition, the Contractor is entitled to offset its claims to the Client against debts that companies affiliated to the Contractor have against the Client. Furthermore, the Contractor is entitled to offset its debts to the Client against claims against companies affiliated to the Client. 'Affiliated companies' means all companies belonging to the same group, within the meaning of Book 2, Section 24b of the Dutch Civil Code, and a participation within the meaning of Book 2, Section 24c of the Dutch Civil Code.

17.8. For late payments, the Client owes the Contractor all extrajudicial costs with a minimum of € 75.

These costs are calculated on the basis of the following table, i.e., the principal sum plus interest:

on the first	€ 3,000	15%
on the excess up to	€ 6,000	10%
on the excess up to	€ 15,000	8%
on the excess up to	€ 60,000	5%
on the excess from	€ 60,000 or more	3%

The extrajudicial costs actually incurred are due if they are higher than the calculation given above.

17.9. If judgment is rendered in favour of the Contractor in legal proceedings, either entirely or for the most part, the Client will bear all costs incurred in connection with these proceedings.

Article 18: Securities

18.1. Irrespective of the agreed payment terms, the Client is obliged to provide sufficient security for payment immediately on the Contractor's request and at its discretion. If the Client does not comply with this provision within the set time limit, it will immediately be in default. In that case, the Contractor has the right to terminate the agreement and to recover its damages from the Client.

18.2. The Contractor remains the owner of the delivered goods as long as the Client:

a. has not fulfilled its obligations under any agreement with the Contractor;
b. claims arising from non-fulfilment of the aforementioned agreements, such as damage, penalties, interest and costs, have not been settled.

18.3. As long as the delivered goods are subject to retention of title, the Client may not encumber or dispose of these goods other than in the course of its normal business operations. This provision has effect under property law.

18.4. After the Contractor has invoked its retention of title, it may take back the delivered goods. The Client will cooperate fully with this.

18.5. If the Client has fulfilled its obligations after the Contractor has delivered the goods to it in accordance with the agreement, the retention of title with respect to these goods is revived if the Client does not fulfil its obligations under an agreement entered into subsequently.

18.6. The Contractor has a right of pledge and a right of retention on all goods that it has or may receive from the Client on any grounds whatsoever and for all claims that it has or might have against the Client.

Article 19: Intellectual property rights

19.1. The Contractor is considered to be the maker, designer or inventor of the works, models or inventions created in the context of the agreement. The Contractor therefore has the exclusive right to apply for a patent, trademark or model.

19.2. The Contractor will not transfer any intellectual property rights to the Client in the implementation of the agreement.

19.3. If the performance to be delivered by the Contractor (also) includes providing computer software, the source code will not be handed over to the Client. The Client will only acquire a non-exclusive, worldwide and perpetual licence for use for the computer software solely for the purpose of the normal use and proper functioning of the good. The Client is not permitted to transfer the licence or to issue a sub-licence. When the Client sells the good to a third party, the licence transfers by operation of law to the acquirer of the good.

19.4. The Contractor disclaims liability for damages that the Client suffers as a result of an infringement of third-party intellectual property rights. The Client indemnifies the Contractor against any third-party claims related to an infringement of intellectual property rights.

Article 20: Assignment of rights or obligations

The Client may not assign or pledge any rights or obligations pursuant to any article in these General Terms and Conditions or the underlying agreement(s), unless it has the prior written consent of the Contractor. This provision has effect under property law.

Article 21: Cancellation or termination of the agreement

21.1. The Client is not entitled to cancel or terminate the agreement, unless the Contractor agrees to this. If the Contractor agrees, the Client will owe the Contractor an immediately due and payable compensation equal to the agreed price, less the savings for the Contractor as a result of the termination. The compensation will be at least 20% of the agreed price.

21.2. If the price depends on the actual costs to be incurred by the Contractor (on a cost-plus basis), the compensation as referred to in the first paragraph of this article is estimated based on the sum of the costs and labour and the profit that the Contractor would have made for the entire contract.

Article 22: Applicable law and competent court

22.1. Dutch law applies.

22.2. The Vienna Sales Convention (CISG) does not apply, nor does any other international regulation that may be excluded.

22.3. The Dutch civil court with jurisdiction in the Contractor's place of business is authorised to take cognisance of any disputes. The Contractor may deviate from this rule governing jurisdiction and rely on the statutory rules governing jurisdiction instead.

These Terms and Conditions constitute a comprehensive translation of the Dutch version of the Terms and Conditions of the Metaalunie as filed with the Registry of the Court of Rotterdam on 1 January 2019. The Dutch version will prevail in the explanation and interpretation of this text.